

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

THE RESEARCH FOUNDATION OF
STATE UNIVERSITY OF NEW YORK;
NEW YORK UNIVERSITY; GALDERMA
LABORATORIES INC.; AND GALDERMA
LABORATORIES, L.P.,

Plaintiffs,

v.

MYLAN PHARMACEUTICALS INC.

Defendant.

MYLAN PHARMACEUTICALS INC.,

Plaintiff,

v.

GALDERMA LABORATORIES INC.;
GALDERMA LABORATORIES, L.P.; AND
SUPERNUS PHARMACEUTICALS, INC.

Defendants.

C.A. No. 09-184-LPS

C.A. No. 10-892-LPS

MYLAN’S OPPOSITION TO MOTION TO RELEASE BOND

Mylan Pharmaceuticals Inc. (“Mylan”) respectfully opposes Galderma’s motion for an order to release the Preliminary Injunction bond. Mylan intends to file a Notice of Appeal regarding the Court’s May 16, 2012 Order, including the Court’s order denying Mylan’s request to recover damages incurred as a result of the Preliminary Injunction.

The purpose of a Preliminary Injunction bond is to “provide[] a fund to use to compensate incorrectly enjoined defendants.” *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 804 (3d Cir. 1989); *see also* Fed. R. Civ. P. 65(c) (a Preliminary Injunction bond is intended “to pay the costs and damages sustained by any party found to have been wrongfully

enjoined or restrained.”). Because the dispute regarding Mylan’s right to compensation from the bond will be appealed and remains unresolved, there is no just cause to exonerate the bond. *See Buddy Sys., Inc. v. Exer-Genie, Inc.*, 545 F.2d 1164, 1169-70 (9th Cir. 1976) (referring to the district court’s premature exoneration of the PI bond prior to the appeal in a patent case as “erroneous”); Wright & Miller § 2972 (“A district court should not release a surety prior to a final determination of the dispute. Nor probably should the court release the surety if an appeal is pending by the principal’s opponent, absent a determination on the issue of damages.”).

Galderma’s motion thus invites the Court to commit error. Notably, Galderma did not cite any authority in support of its motion.

Accordingly, Mylan respectfully opposes Galderma’s motion to release the bond.

Respectfully submitted,

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Dated: June 13, 2012
1063154 / 34192

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CERTIFICATE OF SERVICE

I, David E. Moore, hereby certify that on June 13, 2012, the attached document was electronically filed with the Clerk of the Court using CM/ECF which will send notification to the registered attorney(s) of record that the document has been filed and is available for viewing and downloading.

I further certify that on June 13, 2012, the attached document was Electronically Mailed to the following person(s):

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